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Current Topics.

Foreign Enlistment.

In view of the possibility of an outbreak of hostilities between Italy and Ethiopia, an announcement has been issued by the Foreign Office calling attention to the provisions of s. 4 of the Foreign Enlistment Act, 1870, whereby it is made an offence for any British subject to accept, or agree to accept, without His Majesty's licence, "any commission or engagement in the military or naval service of any foreign state at war with any foreign state at peace with His Majesty." The policy embodied in this section, and indeed, throughout the Act of 1870, is the very wise one of seeking, as far as this is possible, to circumscribe the ambit of war and to avoid imperilling the neutrality of this country through the participation of British subjects in the quarrels of other nations. The Act of 1870 was not the first to seek this end. By two statutes of the reign of George II it was made felony, punishable with death, to enter the service of a foreign state, but the *raison d'etre* of that legislation was to prevent the formation of Jacobite armies in France. A more enlightened and less selfish aim animated the Legislature in 1819, which passed an Act "to prevent the enlisting or engagement of His Majesty's subjects to serve in foreign service, and the fitting out or equipping in His Majesty's dominions vessels for warlike purposes without His Majesty's licence." It has been said that the operation of this Act was suspended on one occasion to allow Sir de Lacy Evans to raise a British Legion against the Carlists in Spain in 1835. Our quarrel with the United States arising out of the depredations of the *Alabama* led to a fresh consideration of the whole subject and eventuated in the passing of the Foreign Enlistment Act, 1870, under which the Foreign Office warning has just been issued.

Lost Property.

The special number of *The Times* of last Saturday, devoted to the history of the Great Western Railway since it came into being 100 years ago, is packed with a variety of articles of interest to the engineer, the contractor, railway officials, and one at least which may be said to appeal to the lawyer, namely, that devoted to the flotsam and jetsam of the trains, in other words, property which has been lost by careless travellers and never reclaimed. In dealing with this subject—one not devoid of humour illustrating the very casual habits of many passengers—the writer stated that "from time to time, usually twice a year, the miscellaneous accumulations of the lost property office are submitted, suitably sorted and grouped, to public auction, and so find new owners and get into service again." To the lawyer no maxim is more familiar than "*Nemo dat quod non habet*," which in ordinary parlance means that no one can give that which he does not possess; in other words, that a person with no title to goods cannot, apart from enabling provisions of an Act of Parliament, pass a title to another person, however innocent the latter may be in the transaction. As we all know, however, the application of the general maxim has been overriden, for example, by the provisions of the Factors Acts, and doubtless the various railway companies have taken the precaution of having inserted in their private Acts, or elsewhere, provisions enabling them to confer a title to goods which have been left on their premises and have remained unclaimed by the true owners for a certain length of time.

Crime Statistics.

A Blue Book published by the Stationery Office towards the end of last month (Cmd. 4977, price 3s. 6d.) contains statistics of crime in England and Wales for the year 1933. Indictable offences during the year numbered 62,660, which shows a slight improvement compared with the previous year's figure of 64,985. The relative gravity of the offences is indicated by the proportion of offenders dealt with by the courts of summary jurisdiction, the ordinary courts and the juvenile courts, which was four, three and one respectively. Ninety-six per cent. of the juveniles were found guilty of some form of theft, 86 per cent. of them being dealt with under the Probation of Offenders Act. Nearly one-fourth of those found guilty of indictable offences were under sixteen years of age, while one-fifth were between sixteen and twenty-one. The publication shows that the proportion of offenders was nearly eight times higher among males than females, and three or four times higher among boys and youths under twenty-one than men of thirty and over, but it is pointed out that the theft of a bottle of ginger beer has the same numerical value in the statistics as the robbery of a jeweller's shop, and that the age groups over twenty-one include most of the criminals responsible for the more serious offences. Allusion is made to the large proportion of the breaking and entering cases for which children and young persons were responsible, particularly in regard to unoccupied premises. Compared with the figure for 1929, that for 1933 shows an increase of more than one-half in this class of offence, nearly one-half of the total being accounted for by persons under sixteen. Industrial depression and unemployment are cited as factors influencing the number of crimes committed by males over sixteen. There was an increase in the proportion of such offenders each year from 1929 to 1932, and a decrease in 1933, the year during which unemployment figures began to fall showing a turn for the better. It is suggested that delinquency among children is also affected by unemployment for, when home conditions are harder and there is less pocket money available, there may be an increased tendency among children to pilfer. It is

pointed out, however, that the improvement shown in 1933 in regard to male offenders of all ages over sixteen did not extend to boys under that age. During the year the report states that ninety-nine cases of murder were known to the police. Nineteen persons were convicted, and in forty cases the murderer or suspect committed suicide. The number of verdicts of suicide continues, over a term of years, to show a lamentable increase, although the figure for the year under review, when the total was 5,543, shows a slight decrease compared with that for 1932. The number of cases of attempted suicide known to the police was 3,354.

Preservation of Records.

We have in the past alluded in these columns to the work which is being done in the direction of preserving records throwing light upon the customs and happenings of the past, and to the importance of such work from an historical standpoint. It is probable that members of the legal profession will be among the first to appreciate the significance of these activities, and in this connection it is interesting to note that the co-operation of all Kent solicitors has been invited in a recent letter addressed to them by Lord Conway, President of the Kent Archæological Society, and by Mr. F. W. Tyler, the Hon. Secretary of the Records Branch. The letter points out, according to a paragraph in *The Times*, that a large part of the historical material at present rests in the archives of solicitors practising in the county, who, it is suggested, may not be aware of the importance of the treasures in their possession. Often solicitors have inherited the documents of their predecessors for many generations and have seldom had occasion to consult them. It is intimated that documents which would be acceptable for preservation are those throwing light on the parish and the borough, land holding, manors, church, roads, poor-law, genealogy, etc. Among the forms which these documents may take are old deeds, abstracts of title, court rolls, opinions of counsel, briefs, old plans, particulars of sale, pedigrees, parish books and churchwardens' accounts. It is stated that arrangements can, if necessary, be made for documents to be deposited on loan. In Kent, a county peculiarly rich in old charters and other historical matter, documents representing seventy or eighty parishes have already been collected, but large further additions will be welcomed. The material is sorted out, calendared, arranged under parishes, and rendered available for inspection and research in the branch storage room in the old prison of Canterbury, which has been allotted by the Record Office for this purpose. There are doubtless many instances outside Kent of solicitors who would be glad to co-operate in work of the foregoing character and incidentally provide themselves with, in some cases, much needed additional space. It is, indeed, to be feared that the latter consideration has sealed the fate of much precious historical material.

Elementary Education: Board's Report.

The report of the Board of Education for 1934 which was recently published by the Stationery Office (Cmd. 4968, 3s. 6d. net) contains for the first time a detailed list showing how far individual authorities had by the 31st March, 1934, reorganised the schools in their areas on the lines of the Hadlow Report. At the date just mentioned about 53 per cent. of the pupils aged eleven and over were in reorganised schools, the corresponding figure for the previous year being 50 per cent. The process of replacing or improving the premises of black-list schools continues and, during the year with which the report deals, seventy-two schools were removed from the list. Reference is made to the special investigation conducted during the year of the circumstances in which, in a number of areas, the elimination of over-large classes appeared to be proceeding too slowly, and a substantial reduction in the number of such classes is recorded. It is stated that the quality of the teaching staff continues to improve. The Board announces the establishment of a scheme of National Certificates in Commerce, the first examination for which will be held some time during next year. Advance is indicated in the process of the replacement of old and the provision of new premises by local education authorities. During the nine months from the beginning of April to the end of December, 1934, the Board gave approval to proposals involving a capital expenditure of £4,449,212, which shows an increase of £885,678 on the capital expenditure approved for the full financial year 1933–34. The total number of children on the registers of public elementary schools—about 5,500,000—shows a slight decline on the previous year's figure, while the number of pupils in secondary schools recognised as eligible from grant was, according to the result of the Board's examination of admission registers, 448,421 on 31st March, 1934—an increase of about 6,500 on the figure for the end of March, 1933. The percentage of graduates employed in grant-aided secondary schools shows a slight increase, being 85·5 in the case of men and 68·1 in the case of women, as compared with 84·9 and 67·5 respectively for the previous year.

Ribbon Development and Planning.

The restriction of building along the frontages of roads clearly impinges upon the planning of a district. It may be remembered that during its passage through Parliament the suggestion was made that the bodies to be charged with the local administration of the Restriction of Ribbon Development Act, 1935, should have been the planning and not the highway authorities. That suggestion was rejected and was indeed impractical if, for no other reason, than the comparatively undeveloped state of local administration in this respect. But the Act contains references to the planning authorities, and the Circular (No. 1495) recently addressed by the Ministry of Health to local authorities (outside London) and Joint Executive Town Planning Committees of England and Wales contains useful information on the present position. It is pointed out that nothing in the new Act limits the existing powers of planning authorities to declare that a planning scheme shall be prepared or to control interim development; nor is a consent given under the planning law to the erection of buildings prior to the imposition of restrictions by a highway authority under the Act invalidated by the Act or the imposition of restrictions thereunder. Attention is drawn to sub-s. (2) of s. 7, which requires a highway authority to consult with planning authorities with a view to securing co-ordination between the exercise of its powers in regard to consents to development and the exercise by the planning authorities of their powers in relation to schemes, and it is suggested that, for the purpose of the consultation thus envisaged, the planning authority should endeavour to arrange that representatives, with full knowledge of the planning proposals, of applications before them, and of the manner in which it is proposed to deal with those applications, shall be constantly ready to confer with representatives of the highway authority. Mention is made of the probable desire on the part of highway authorities for information regarding planning schemes affecting development on unclassified roads in view of the powers which they have to apply the provisions of the Act to unclassified roads. The possible modification of planning proposals in the light of the new highway powers, or of highway proposals in the light of planning schemes, are also alluded to. Inconsistent or duplicated restrictions under a scheme and under the Act are clearly to be avoided, and, it is stated, the Minister of Health would not feel able to approve the retention in a scheme of provisions designed to take the place of restrictions imposed by or under the Act, unless the Minister of Transport would be in a position, and would be prepared, if the scheme were approved, to issue a derestricting order under s. 12 of the Act. Copies of the Circular may be obtained at the Stationery Office (1d. each).

Responsibilities of Water Undertakers.

"No action will lie," said Lord Blackburn in *Geddis* v. *Proprietors of Bann Reservoir* (1878), 3 A.C. 430, "for doing that which the Legislature has authorised, if it be done without negligence, although it does occasion damage to anyone. But an action does lie for doing that which the Legislature has authorised, if it be done negligently."

The doctrine in *Rylands* v. *Fletcher* (1865), L.R. 3, H.L. 330, has been held to apply to a case where the owners of hydraulic mains containing water at a high pressure used to supply hydraulic power had laid those mains under certain streets. The statutes under which they were authorised contained no clause exempting them from liability for nuisance. The mains burst in four different places, damaging the plaintiff's electric cables. It was held that the defendants were under an absolute liability with regard to the damage, even though they had not been negligent, as there was no statutory authorisation of any nuisance. The doctrine in *Rylands* v. *Fletcher, supra*, was held to extend to a case in which the plaintiff occupied land under a licence, and not by reason of property rights in the soil: *Charing Cross Electricity Supply Co.* v. *Hydraulic Power Co.* [1914] 3 K.B. 772, following *Midwood* v. *Manchester Corporation* [1905] 2 K.B. 597.

The opposite of this case had already been illustrated in a number of cases, notable among which was *Green* v. *The Chelsea Waterworks Co.*, 70 L.T. 547, in which a main belonging to the defendants burst, causing considerable damage. It was ingeniously argued for the plaintiff that, although the defendants were authorised by statute, the principle in *Rylands* v. *Fletcher, supra*, applied as, "by giving such powers to the waterworks companies the Legislature could not have intended to place companies in a better position than private persons would have been in if the damage had been caused by a private person storing large quantities of water on his premises." It was said that the bursting of the pipe was not a necessary consequence of the laying down of the mains and the storage of water therein. Lindley, L.J., said: "*Rylands* v. *Fletcher* was not a case of a company authorised to lay down water by Act of Parliament. It was a case of a private individual storing water on his own land for his own purposes . . . That case is not to be extended beyond the legitimate principle on which the House of Lords decided it. If it were extended as far as strict logic would require, it would be a very oppressive decision. Here the defendant company were only doing what they were authorised to do by their Act, and as they were not guilty of negligence they are not liable for damage." See also *Sutton* v. *Clarke* (1815), 6 Taunt. 29; *Blyth* v. *Birmingham Waterworks Co.* (1856), 11 Exch. 781; *Dunn* v. *Birmingham Canal Co.*, L.R. 8, Q.B. 42.

In *Markland* v. *Manchester Corporation*, 50 T.L.R. 215, and *The Times*, 8th July, 1935, the defendants were statutory authorities supplying a district with water. The action had been brought by the widow of a man who had been killed in a collision between a tramcar and a motorcar in the district supplied by the defendant corporation. The motorcar had skidded on ice which had formed on the road owing to a frost which had set in three hours earlier. The frozen water had come from a burst lead service pipe through which the water was supplied. Mr. Justice Macnaghten negatived negligence in the construction and management of the service pipe, but held that there had been negligence in that the defendants knew or should have known of the existence of the leakage and that they took insufficient or no steps to render the roadway safe. It appeared that the corporation's waterman listened for leaks with a stethoscope in a periodical round of the district, which took nine days, and that other water authorities took no greater precautions. In spite of that, the Court of Appeal (Lord Justice Scrutton dissenting) and a unanimous House of Lords concurred in dismissing an appeal.

Mr. Justice Talbot said in the Court of Appeal: "It is settled by authority, binding on this court, that distributors of water for general consumption under the authority of Parliament are not liable for damage caused by the bursting of one of their service pipes unless negligence be proved: *Green and Haydon* v. *Chelsea Waterworks Co.*, 10 T.L.R. 259, approved in *Charing Cross Electricity Supply Company* v. *London Hydraulic Power Co.* [1914] 3 K.B. 772, 781.

In his dissenting judgment, Lord Justice Scrutton said: "Is a water authority, which itself takes the precautions usually taken by other water authorities, and adds to them the probability of information from other interested authorities, guilty of negligence if it is not informed of a water burst for two and three-quarter days? . . . For nearly the whole of that time, until the frost set in at 8 p.m. on Saturday, the burst was not dangerous to users of the road, though if continued it would damage the road, and if frost set in it might be dangerous to persons using the road. Even assuming, as the judge finds, that some persons of an independent authority who ought to have reported bursts, through negligence, failure to use their eyes—did not see the burst, and therefore, did not report it, I do not see how their negligence can be imputed to the corporation. It is a failure of their precautions, their sources of warning, but not a failure due to negligence on their part.

Lord Justice Slesser and Mr. Justice Talbot both quoted *Steggles* v. *New River Co.*, 13 W.R. 413, and *Mose* v. *Hastings and St. Leonards Gas Co.*, 4 F. & F. 324, to show that it is not incumbent upon the plaintiff to show how the corporation could properly perform the duties reasonably imposed upon them. In the former case the action arose out of an escape of water into the plaintiff's cellar, caused by the effect of frost on a plug in the defendants' water pipe. The action was tried twice, the jury having disagreed on the first trial, and both Cockburn, C.J., and Mellor, J., followed the law as laid down in *Blyth* v. *Birmingham Waterworks Co.*, 11 Ex. 781, "that although the company were not liable for the unforeseen results of an extraordinary frost, they were bound to use reasonable care and precaution to guard against such consequences as might be reasonably foreseen to be likely to result from ordinary frost. There was some evidence, though slight, that it was known that the effect of frost was to "start" the plugs on the pipes, and that the result of this, if the frost also congealed the slush and earth in the aperture . . . would be that the water would escape at the sides, and trickle through the soil, and there was also some evidence that it was possible to take some precautions to prevent this, though what they should be did not very distinctly appear."

The headnote of the second case, which fairly represents the summing-up of Chief Baron Pollock, contains this statement: "A gas company are bound to keep up such a reasonable inspection of their mains and pipes as may enable them to detect an escape of gas, or fracture or imperfection of pipes as may lead to danger of an explosion, and if an explosion takes place from a fracture or defect which has existed for several days, during which time it has also been discoverable by inspection, that is evidence of negligence on the part of the company."

Mr. Justice Talbot in the Court of Appeal in *Markland's Case* said that in his opinion "the learned judge was entitled to find that in the length of time during which the corporation were ignorant of the unmistakable signs of this leak, is in the circumstances, *primâ facie* evidence that they have not done all that they could reasonably have done to find it out, and he was right in holding that the plaintiff had discharged the burden of proof which was upon her, and that no evidence sufficient to rebut her case had been adduced." With this view the House of Lords concurred, holding that the plaintiff had made out her case, and that it was not necessary for her to show what steps the corporation ought to have taken. The appeal was dismissed with costs.

The result of the case is to impose upon water undertakers the same heavy responsibility as to inspection as already exists in the case of gas undertakers, although the risks of accident are considerably less in the former than in the latter case. The Manchester Corporation were no more negligent in the matter of inspection than all the other water undertakers throughout the country, and therefore, *Markland* v. *Manchester Corporation* is a decision of great practical significance.

Costs.

CONVEYANCING SCALES.

We dealt in the last article with a few of the points of difficulty that arise in connection with solicitors' charges for the sale of property by auction. We propose to continue with other points in connection with this matter.

Take the case, for instance, where property is divided into lots for the purpose of sale. If none of the lots is sold, the matter is simplified by r. 2 of the rules applicable to Part I which provides that in such a case the scale fee for an attempted sale is to be charged on the aggregate of the reserve prices. This, of course, is not always so advantageous for the solicitor, as if he were permitted to charge a scale fee for each separate lot. For example, if property is offered in three lots with a reserve of £900 on each lot, and the property is unsold, then the scale commission for the attempted sale would be £9 19s., calculated according to this rule, whilst it would be £16 4s. if calculated on the reserve price of each lot separately.

It will be observed that r. 2 provides only for the case where there is an attempted sale by auction, and it leaves open the question of calculating the scale remuneration where there is an effective sale of property in lots. Thus, to take the instance cited above, and assuming that the three lots are each sold for £900, we find no direct guidance in the Acts as to whether the scale remuneration is to be calculated by reference to the aggregate sale price of the whole of the property or by reference to the sale price of the individual items. The matter, however, came before the courts in the case of *In re Onward Building Society* [1893] 1 Q.B. 16, where the solicitor who had sold the properties on behalf of the Official Receiver had charged his remuneration on the conducting scale calculated on each of the separate lots. The Taxing Master disallowed his bill, as rendered, and allowed a conducting fee calculated on the aggregate of the purchase moneys. Upon the matter coming before the court, the Taxing Master's decision was affirmed. There is, as stated, no direct statutory authority for the decision, but Pollock, B., rested his opinion on the principles to be inferred from the rules. Rule 1, which provides for a separate deducing fee in respect of each lot, indicates, as Pollock, B., observed, an exception. It might be that the various lots would be sold to different purchasers, necessitating separate abstracts, etc. Hence, the separate fee for deducing the title of each lot. Very little, if any, extra work is involved in selling the property in lots as against selling it as a whole. This fact was recognised when the case of unsold lots was considered, and it seemed only reasonable to assume that the same principles should apply with equal force to the case of lots that are separately sold at an auction.

We then come to the problem which arises where a property is offered for auction in lots, and some of the lots are sold and some are not sold. The rules again do not give a clear indication of the method of calculating the remuneration in such a case, but it seems that the proper course, and it is a course which has the approval of The Law Society, is to charge a conducting scale fee, calculated by reference to the aggregate purchase moneys of the lots sold, and a scale conducting fee on the lots unsold, calculated by reference to the aggregate reserve prices. Where there is no reserve price and the property is not sold at the auction, there can be no scale remuneration, and the solicitor's remuneration should be charged according to Sched. II.

It must, of course, be borne in mind that the scales set out in Part I, Sched. I, are, as we have previously stated, only applicable where the transactions are completed. The scale charge can therefore only be made where the property is subsequently sold, either by auction or by private treaty, by the same solicitor. Where then, a property is put up for auction by a solicitor, and is not sold, how is he to charge for the work done? It appears that he will have to be guided by circumstances, but he is not to be asked to wait indefinitely for his remuneration and it would seem to follow from *In re Smith, Pinsent & Co.* 44 Ch. D. 303, that in such a case, the solicitor would be justified in charging according to Sched. II for the work done in connection with the abortive auction. He must, however, give credit for the amount so charged if he acts in respect of a subsequent sale, so as to entitle him, or alternatively to bind him, to charge the scale conducting fee in respect of the preceding abortive auction.

The matter is open to some doubt as to when a solicitor would, in fact, become entitled to charge under Sched. II, for it will be remembered that he is bound to charge according to scale in respect of all completed transactions, except where he has elected to do otherwise under r. 6. The correct view seems to be that if there is a break in the continuity of the business, as, for instance, where a solicitor has conducted an auction at which the property is not sold and he is instructed to do nothing further, then he would be justified in treating this break as marking the end of that particular "business." He could accordingly render his bill on the basis of Sched. II and this basis would not be disturbed if he was subsequently instructed to dispose of the same property. The two transactions would, by this reasoning, be regarded as distinct. If, however, after conducting an auction at which the property is not sold, the solicitor continues to act in connection with its disposal and does, in fact, dispose of the property, either by auction or by private treaty, then, notwithstanding that he may have rendered his bill in respect of the abortive auction according to Sched. II, he will have to content himself with the scale conducting fee in respect of both the original abortive auction and the later completed sale, and must give credit for the amount of his charges previously rendered according to Sched. II.

Pressure of space compels us to reserve the consideration of the remaining problems under this rule until a later article.

Company Law and Practice.

Capital Expenditure to Satisfy Payments out of Future Profits.

The legitimacy of the expenditure of capital by a company was considered again by the Court of Appeal in *Investment Trust Corporation Ltd.* v. *Singapore Traction Co. Ltd.* [1935] 1 Ch. 615. The decision of the House of Lords in *Bury* v. *Famatina Development Corporation* [1910] A.C. 439 (by which Eve, J., had considered himself bound) was discussed and distinguished by the Court of Appeal, and it would, I think, be convenient to consider that case before examining the facts of the decision in the *Investment Trust Corporation Case*.

In the *Famatina Corporation Case* the company had borrowed £50,000 by the issue of £10 bonds on the terms that the company would when and so far as there were net profits available for the purpose pay to the bondholder the principal money of £10, together with a bonus of £25, the principal money and bonus to be paid exclusively out of profits. The registered holder was entitled to convert any ten bonds of the series into a first mortgage debenture of the company for £150 without prejudice to his right to the bonus. Practically the whole of the bondholders exercised that right, with the result

that there were £50,000 first mortgage debentures outstanding and rights to bonuses amounting to £125,000 charged on income.

The company had made no profits, and it was arranged, with the consent of all parties interested, that new £1 shares should be issued, and the bonus of £25 satisfied or extinguished by the allotment of twenty new £1 shares considered as fully paid. The House of Lords held that the proposed arrangement was *ultra vires* the company, and Lord Macnaghten said that the directors would in fact be issuing shares without payment in money or money's worth. "The charge is a charge on net profits only, that is, it is a charge on money which the company earns, but which, by the declaration of a general meeting on the recommendation of the directors, is, or would be but for the charge upon it, the property of the shareholders, and not the property of the company. The company as a corporation would be receiving nothing whatever in return for the extinction of the charge. Nor would the position of the company's creditors be improved in any respect." So in the court below, Cozens-Hardy, M.R., thought that the transaction was tantamount to an issue of shares at a discount; and Farwell, L.J., quoted the well-known words of Lord Watson in *Trevor* v. *Whitworth*, 12 A.C. 409, at p. 423: "Paid-up capital may be diminished or lost in the course of the company's trading: that is a result which no legislation can prevent, but persons who deal with and give credit to a limited company naturally rely upon the fact that the company is trading with a certain amount of capital already paid, as well as upon the responsibility of its members for the capital remaining at call, and they are entitled to assume that no part of the capital which has been paid into the coffers of the company has been subsequently paid out, except in the legitimate course of its business"; and added that it was not a usual and legitimate way of carrying on business to dispose of contingent profits *in futuro* in a manner which will deplete capital.

In the *Investment Trust Corporation Case* the Court of Appeal, as I have said, considered the *Famatina Corporation Case*, and the emphasis of the learned lords justices is on the fact that in that case the company were getting no advantage whatever by the allotment of fully paid shares which was proposed to be made. Lord Hanworth pointed out that the income bondholder had no right to receive a return from the capital of the company but a charge upon income only—"a right to dip into the pool of money which belongs to and can be, and will be, divided among the shareholders as individuals, money which is not the property of the company. The scheme suggested whereby the income bondholder is to give up his bond is that he shall receive from the company new shares, and the company itself is to get nothing in return for these new shares . . . The *Famatina Case* seems to me merely an illustration of the case in which a company ought not to issue shares at a discount, and ought not to issue shares unless it gets either money or money's worth for them." And Maugham, L.J., pointed out that in the *Famatina Case* the House of Lords was faced with a somewhat alarming possibility. "They were unwilling to give currency to the view that money could be borrowed by a limited company on terms of a huge bonus payable out of future profits, and that the bonuses could then be released or extinguished in consideration of fully paid-up shares. If that could be done, and could properly be done, the device afforded a method of issuing shares at a discount by a very simple process. It has also to be remembered that the rights to bonus were not held by persons who had any obligation towards the company at all. The bonus had been given to them when the original bonds were subscribed for, and, accordingly, if the bonuses were extinguished by the issue of so many fully paid-up shares, the company as a corporation would not be getting anything directly from the holders of the bonds, though no doubt the future profits of the company would be relieved from an obligation, and the shareholders of the company, including the people who got shares in return for the extinguishment of the bonds, would be getting larger dividends than they otherwise would."

To turn now to the facts of the *Investment Trust Corporation Ltd.* v. *Singapore Traction Co. Ltd.* In 1925 the defendant company had entered into an agreement with the Shanghai Electric Construction Company pursuant to an ordinance granting a concession for the working of trolley vehicles and omnibuses in Singapore, whereby the Shanghai Company was to manage the undertaking: the Shanghai Company was to have a controlling voting power in the Singapore Company and to receive in respect of each financial period of the Singapore Company 50 per cent. of its net profits. The Singapore Company had now become desirous of putting an end to the management of the Shanghai Company, and an agreement was proposed to be entered into whereby the Shanghai Company, in consideration of giving up the management and its right to a half-share of the profits of the Singapore Company, was to receive from that company £100,000, raisable by an issue of debentures. A shareholder of the Singapore Company now sought to restrain the Singapore Company from entering into the proposed agreement on the ground that it was *ultra vires* the company. It was not suggested that the proposal was anything other than a business arrangement which the directors honestly believed to be of advantage to the company.

Eve, J., granted the desired injunction on the authority of the *Famatina Corporation Case*, but the Court of Appeal reversed his decision. In the present case the company was definitely getting something of advantage, and if the company was getting what was money's worth then whether the company carried out the arrangement to pay the £100,000 by raising money on debentures or by utilising other resources was a matter for the company to consider. It was true that the release was of a liability to pay a sum only out of future profits, so that in a sense no new asset would be created which could be shown in the balance sheet as the result of such a transaction. But the result of the bargain would be to increase the value of the undertaking as a whole and for the benefit of the company as such.

It was also true, as Romer, L.J., pointed out, that as a necessary result of getting rid of the management agreement, and therefore, of the liability to pay over one-half share of the company's profits, the revenue of the company would be *pro tanto* increased. But the *Famatina Corporation Case* "certainly did not decide that a company can never spend its capital in any way which would necessarily result in an increase of the company's revenue available for dividend." The illustration was given of a company with a leasehold house for which it is paying a rent which thinks it desirable in the interest of its business to acquire the freehold of the premises; such an expenditure would be legitimate although an incidental result of that expenditure is that revenue is no longer debited each year with the annual rent. So, too, a company with a manager whom it thinks desirable to get rid of could pay him a lump sum out of its capital in satisfaction of his claims under the agreement, and in consideration of his putting an end to that agreement, although the result would be that revenue would thenceforward benefit to the extent of the manager's salary. The position would not be altered by the fact that the salary of the manager was payable out of, and only out of the future profits of the company, if any; because it could not be said that the company would be receiving nothing whatever in consideration for the extinction of the charge on its future profits, for it would in fact be receiving a release of the manager's right to continue to manage the company and freedom from the obligation under the management agreement.

It will be observed that in the present case there could be no question of the transaction resulting in the issue of shares

at a discount or without the company receiving money or money's worth, because the transaction did not involve, as the transaction in the *Famatina Corporation Case* involved, an issue of shares at all. It appears that the contention put forward was that the *Famatina Corporation Case* is an authority for the proposition that the extinguishment of a charge on future profits is a transaction for which the company, as a corporation, receives nothing, and that therefore a capital expenditure to accomplish such extinguishment is improper and *ultra vires*. The Court of Appeal's decision shows that each case will depend on its particular facts, and that if those facts establish that the company, as such, is receiving something of value and the transaction is a *bonâ fide* one, then there is no general principle which will prevent a company compounding payments which depend on future profits by a capital expenditure.

A Conveyancer's Diary.

Imperfect Gift. Appointment of Donee as Administrator of Donor.

A RECENT case which is worthy of some attention, deciding as it does a point which does not seem to have before been the subject of any judicial decision, is *Re James; James* v. *James* [1935] 1 Ch. 449.

Mr. John J., the deceased, died in 1933 a bachelor and intestate, and letters of administration were granted to the plaintiff and the defendant S. M. J. James J., the father of the deceased, lived at premises known as Green Vale, of which he was the owner. He died in 1924, a widower and intestate, leaving the deceased John J. his only child him surviving. The defendant was in the employ of James J. from 1905 until his death, as his housekeeper. She received no payment from him for her services, but from time to time he stated that Green Vale and his furniture were to be hers on his death.

On the death of James J. the deceased took away from Green Vale a few small articles, but he handed over all the rest of the furniture and also the title deeds to the defendant. She and her husband continued to reside at Green Vale until the death of the deceased, and they still continued to do so. She occupied the house rent free.

S. M. J. claimed to be entitled to Green Vale beneficially.

The evidence showed that there was a continuing intention in the deceased up to the time of his death to give the property in question to the defendant S. M. J. S. M. J. was in possession and had been left in possession of the premises by the deceased, and also had possession of the title deeds which had been handed to her by the deceased. There was therefore established (as the learned judge found) an imperfect gift of the house, and the question was whether that gift had been perfected by the appointment of S. M. J. as one of the administrators of the deceased's estate.

There can be no doubt (and it was conceded in this case) that if the deceased had made a will and appointed S. M. J. his executrix, that would have resulted in perfecting the gift by vesting the legal estate in her.

The leading case on that point is *Strong* v. *Bird*, L.R. 18 Eq. 315.

In that case there was a debt owing to a deceased lady from one whom she appointed her sole executor. The evidence showed that there was a continuing intention on the part of the deceased to forgive the debt, and it was held that by appointing the debtor her executor the deceased had perfected the gift.

Jessel, M.R., said in the course of his judgment: "It appears to me that there being the continuing intention to give and there being a legal act which transferred the ownership or released the obligation—for it is the same thing—the transaction is perfected, and he does not want the aid of a court of equity to carry it out, or to make it complete, because it is complete already, and there is no equity against him to take the property away from him."

In that instance the donee had been appointed sole executor of the donor, but it has been held that the effect is the same if the donee be only one of the executors.

In *Re Stewart* [1908] 2 Ch. 251, a testator shortly before his death gave instructions to his brokers to purchase certain bonds. He received the brokers' bought note and handed it to his wife with the brokers' letter telling him that the transaction had been carried out, saying to her: "I have bought these bonds for you." The testator died, having made a will by which he appointed his wife one of his executors. The bonds were not received by the testator before his death, but were afterwards handed by the brokers to his executors.

On the facts Neville, J., found that there was a continuing intention to make a gift of the bonds to the wife. The learned judge, commenting on *Strong* v. *Bird*, said that that case purported to lay down a principle of general application. "The decision is, as I understand it, to the following effect: that where a testator has expressed the intention of making a gift of personal estate belonging to him to one who upon his death becomes his executor, the intention continuing unchanged, the executor is entitled to hold the property for his own benefit," and his lordship added later: "The whole of the property in the personal estate in the eye of the law vesting in each executor, it seems to me immaterial whether the donee is the only executor or one of several."

It was contended in *Re James* that, although the principle applied where the donee was one of the executors of the donor, it had no application to the case of an administrator. It is obvious that there is an important distinction. The appointment of an administrator is not an act of the donor, so by that appointment the donor could not be said to have done anything to perfect the imperfect gift.

It seems, however, that it is not material whether the act by which the gift is completed is that of the donor or due to the operation of law. The fact that the donor has become entitled not only in equity, but also at law, is sufficient.

Farwell, J., in the course of his judgment, said: "It is now well settled that in such a case equity will not aid the donee, but on the other hand, if the donee gets the legal title to the property vested in him, he no longer wants the assistance of equity and is entitled to rely on his legal title as against the donor or persons claiming through him . . . The defendant by her appointment as one of the administrators has got the legal estate vested in her, and she needs no assistance from equity to complete her title. Under these circumstances she cannot be compelled at the suit of persons claiming through the donor to surrender her property."

It is somewhat curious that the precise point in question in *Re James* does not appear to have been before the court in any earlier case. I must say, however, that reading the judgment of Jessel, M.R., in *Strong* v. *Bird*, it would be thought that stress was laid upon the fact that the vesting of the legal estate in the donee was the act of the donor himself. The illustration which Jessel, M.R., gave in his judgment appears to indicate that: "For instance, suppose this occurred, that a person made a memorandum on the title deeds of the estate to this effect: 'I give Blackacre to A.B.,' and afterwards conveyed the estate to A.B. by a general description, not intending in any way to change the previous gift, would there be any equity to make the person who had so obtained the legal estate a trustee for the donor?" The point of that being, that the conveyance was not intended to operate as a conveyance of Blackacre as the grantor supposed that he had already disposed of that to the donor. Of course, the learned judge answered the question in the negative.

However, it appears now to be clear that the grant of letters of administration to a donee has the same effect, in this respect, as his appointment as an executor.

Landlord and Tenant Notebook.

Proof of Claim against Assignee of Term.

Law reports are concerned with points of law only; including, of course, points as to whether a question is one of law or fact, which is itself a question of law. But the practitioner, having satisfied himself as to the state of the law, may find himself in difficulties when he comes to consider the matter of evidence. Here a statute seldom, and a report very rarely, affords assistance. In cases in which a landlord contemplates suing an assignee of the term for breaches of a covenant to repair, the law is tolerably clear; the assignee's liability is limited to breaches which occurred while he held the lease. The same applies when the landlord seeks and obtains redress from the original grantee and the latter claims indemnity from the assignee. The legal position has been defined by a number of authorities. But when, as is often the case, there have been a number of assignments, it may be far from easy to apportion blame for, say, dilapidations. Expert evidence may sometimes be of some assistance—one can imagine cases when a competent surveyor would be able plausibly to conjecture the period when certain defects became manifest—but in most cases the aggrieved party may well be at a loss when he comes to consider how to prove responsibility on the part of one of several successive assignees.

He may then derive some inspiration from a perusal of the report of *Smith* v. *Peat* (1853), 9 Ex. 161, for the judgments in that case—while it was reported because of its contribution to the law affecting damages for breaches of covenant to repair—contain some significant comments on the importance of circumstantial evidence and the inferences to be drawn from mere silence.

The facts, in so far as relevant, were that the plaintiff had taken a twenty-one years' lease of premises in 1839. The lease contained fairly stringent tenant's covenants to repair and paint. After holding this lease for some three years, the plaintiff had assigned (in 1843) the residue of eighteen years to the defendant; he held it till 1851, and then assigned the remaining nine years to one T. In fact, the lease was never allowed to expire naturally, for the following year (1852), after some unpleasantness, and a further assignment to one H as trustee for the plaintiff, a surrender was brought about. The premises were then in disrepair, and the landlord came down on the plaintiff, who paid up, and then claimed indemnity from the defendant.

The plaintiff was without expert evidence as to the state of the premises in relation to the covenant in either 1843 (when he had assigned the lease) or 1851 (when the defendant had assigned it). Presumably he gave evidence on the first point himself. And he called T., who deposed that when the defendant assigned to him the premises were out of repair, and that during his short enjoyment of the term he had done nothing to them. A surveyor who was also called on behalf of the plaintiff spoke only to the condition of the building a month after T. had taken possession, and gave his opinion on the amount it would have cost to put them in order.

The jury awarded substantial damages, and it was on the hearing and refusal of a rule to set aside the decision that the pronouncements which I commend as useful were uttered.

There is a general observation: "Apart from the legal question, I observe that, as a matter of fact, in cases of this kind it can never be precisely ascertained how much damage has occurred during the holding of each assignee, or what was the precise state of the premises at the time of each assignment," which merely emphasises the nature of the difficulty.

But the same judgment proceeds: "Here it does not appear that the defendant made any complaint about the state of the premises when he took them"—a negative proposition, be it noted—"and, if so, the presumption is either that the premises were in a good state of repair or that the person from whom he took them paid him a sum of money to put them in repair." And then: "The defendant might have been called to prove the state of the premises when they were assigned to him, but that was not done." The learned judge now comes to the positive evidence: "It was proved that in July, 1852, when H took the premises, they were out of repair. Then what was their condition during the time of the previous assignee? He said that he took the premises from the defendant and that he put them into no better condition than when he took them. Thus we get back to the period when they belonged to the defendant." Then comes further comment on silence: "Then what was the condition of the premises at that time? The defendant was the person to show that, and why was he not called to prove his own case? Simply because he had no case to prove." The last observation does, perhaps, savour of judicial usurpation of the functions of the jury, but the passages which follow are in the nature of a summing-up: "It was, therefore, reasonable for the jury to presume that since he did not show any other person responsible, the dilapidations took place during the time he held the lease. I think that there was evidence from which the jury might come to the conclusion that the dilapidations took place in the time of the defendant. It must be presumed that he occupied in the way that persons usually do on taking an assignment of a lease, and that some person went over the premises on his behalf."

From which we see that direct evidence is not by any means essential in these cases, and conversely that an assignee cannot rely on the fact that assignor or landlord has not been near the premises during the period in respect of which he was liable.

Our County Court Letter.

THE RIGHTS AND LIABILITIES OF DAIRYMEN.

In a recent case at Birmingham County Court (*B. Bennett and Son Limited* v. *Simcock*) the claim was for £60 14s. 2d. as the price of goods sold. The counter-claim was for £86 7s. 6d. for the hire of cheese-making plant. The plaintiffs' case was that their deliveries were as follows: 5,000 gallons of whey at 1½d. per gallon between November, 1933, and January, 1934; separated milk between January, 1934, and May 1934, at 1s. 6d. per churn (of 17 gallons) for May and 2s. 6d. previously. The plaintiffs had received milk from the defendant, and they began making cheese in 1933, for which purpose they sent the milk to a cheese factor, one Morgan. The latter's evidence was that he was to have half the profit on the cheese, and any by-products—including the whey. This was of small value, and the defendant took 5,500 gallons of it for his pigs. The defence was that, in these circumstances, the whey was never the property of the plaintiffs, and the item of £34 in their claim therefore failed. His Honour Judge Dyer, K.C., upheld this submission. With regard to the separated milk, His Honour observed that this was returned to the defendant, in his own churns by which he had sent fresh milk to the plaintiffs. Having originally paid 2s. 6d. per churn, for separated milk, the defendant obtained a reduction to 1s. 6d. which he was prepared to pay as a fair price. It was held, however, that three farthings a gallon (spread over the four months) was a fair price. The plaintiffs were, therefore, entitled to £8 6s. for separated milk and £7 16s. 6d. for cheese. The cheese-making plant was lent by the defendant to the plaintiffs, for use by Morgan, and most of it was returned after 36 weeks. The claim for hire was £2 a week, but 10s. was held to be adequate, and the defendant was entitled to £18 on the counter-claim. The parts not returned were worth £9 17s. 6d., and an order was made for their return in 14 days. Setting off the

£16 2s. 6d. due to the plaintiffs, against the £18 due to the defendant, judgment was given for the defendant for £1 17s. 6d., with costs on the claim and counter-claim.

TITLE TO FURNITURE.

In the recent interpleader issue of *Bird* v. *Short*, at Chesterfield County Court, the claim was for £51 12s. 5d., as the value of goods seized under a wrongful (viz., illegal) distress. The claimant's case was that she had taken up residence with her brother, bringing her own furniture. In September, 1934, the defendant (the brother's landlord) distrained for £22 rent in arrear, but—to save her brother's furniture—the claimant bought it from him, whereupon the brother paid out the bailiff. In March, 1935, a levy was again made, for further rent accrued due, but the claimant contended that, as she had purchased the furniture from her brother, it was not distrainable. The defendant's case was that the above was a fraudulent transaction, as the claimant had no money (wherewith to buy the furniture) and was supported by her brother. This was denied by the claimant, as she had received £22 on the death of her son. Corroborative evidence was given by the bailiff, who was present during the transaction, and had received the money from the brother. His Honour Judge Longson gave judgment for the claimant, with costs. It is to be noted that the Law of Distress Amendment Act, 1908, s. 1 (*b*) and (*c*) protects the goods of any lodger, and the goods of any other person not being a tenant, and not having any beneficial interest in any tenancy of the premises. The claimant must make a declaration, strictly in accordance with the Act. See *Druce and Co. Ltd.* v. *Beaumont Property Trust Limited* (1935), 79 Sol. J. 435, and a leading article entitled "The Sufficiency of Statutory Notices" in our issue of the 31st August, 1935, 79 Sol. J. 633.

DAMAGE BY SCAFFOLDING.

In a recent case at Newcastle-on-Tyne County Court, viz., *Jays, Ltd.* v. *Mains; Scaffolding (Great Britain), Ltd., third parties*, the claim was for £11 5s. 3d. as damages for negligence. The plaintiffs had had their premises repainted by the defendants, and, in the course of operations on a gable end, the roof of a neighbouring shop was damaged. The plaintiffs had admitted liability, and—having paid for the repairs—they claimed reimbursement from the defendants. The latter contended that the liability rested with their sub-contractors, who were joined as third parties. His Honour Judge Thesiger gave judgment for the plaintiffs, against the defendants, and for the defendants against the third parties, with costs in each case.

COUNTY COURT CALENDAR FOR SEPTEMBER.

The following is the list of sittings of Circuit 36 for September, 1935, which arrived too late for publication with the Calendar in last week's issue :—

Circuit 36.—Berkshire, etc.

His Hon. Judge Randolph, K.C.

*Aylesbury,	*Reading, 26 (R.B.)
Buckingham,	Shipston-on-Stour,
Chipping Norton,	Thame,
Henley-on-Thames, 20 (R.)	Wallingford,
High Wycombe,	*Windsor,
*Oxford, 23 (R.B.)	Witney,

ABBREVIATIONS.

* = Bankruptcy Court.
(R.) = Registrar's Court only.
(R.B.) = Registrar in Bankruptcy.

Land and Estate Topics.

By J. A. MORAN.

Activity in the auctioneers' offices just now is mostly concerned with private negotiations and arrangements for the autumn season. There is much property waiting to be brought to the hammer, but nothing definite is likely to be accomplished until the chief holiday period for the present year is a thing of the past.

Building land is sure to command a lot of attention in the near future, as there appears to be a very strong impression among speculators that there is a growing demand for houses of a really substantial character. Naturally, they will cost more money than the villa habitation erected in a hurry, but there will be no difficulty in getting the few extra hundred pounds.

An auction that is sure to command a lot of attention will be held by Messrs. J. Trevor & Sons, of 23, Coleman-street, towards the end of this month. It concerns the property known as the Jewish Industrial School at Hayes, Middlesex. The dozen acres involved occupy a bold main road corner position, with frontages to Uxbridge-road and Coldharbour-lane of about 1,390 feet, 650 feet of which are zoned under the Town Planning Act for shops.

The re-development of the central portion of the Adelphi Estate will be begun next year, when the existing buildings are to be demolished. The area affected is bounded by John-street on the north, Robert-street on the west, Adam-street on the east, and Victoria Embankment-gardens on the south. No definite decision has yet been reached regarding the new buildings to be erected, but various plans are under consideration. Some of the present tenants may be re-housed on the site.

The announcement that Messrs. Cheke & Co. have opened a new estate office opposite Barking Station reminds me of the activities of that "multiple" firm. The well-known London auctioneers have now branch offices at Plaistow, Forest Gate, Leytonstone, Leyton, Wanstead, Woodford Bridge, Manor Park, Seven Kings, Barking, Gidea Park and Romford. Where the next is going to be is, I feel sure, only a matter of time.

The Times gravely informs its readers that Sir Trustram Eve (the well-known rating expert), who says he dislikes the sloping style of writing, has promised to give a prize for the best example of upright writing shown at the next Bedfordshire Agricultural Society's show. After all, a great deal depends on what the writing conveys. For instance, the signature of an income tax officer has seldom anything to recommend it; while the writing on a cheque has, as a rule, a very exhilarating effect.

A Carshalton estate agent was fined £10, with five guineas costs, for drawing up a tenancy lease without having the legal qualifications. His excuse was that he was pressed by a client to get the matter through quickly, and there was no time to go to a solicitor. It was the only time he had drawn up a lease.

This time it was another house agent. He sent his clerk with an old lady who wanted to view a house that was to let. When she arrived there, she made a very critical inspection; and, standing in front of what she considered to be a picture, probably by an "Old Master," she said: "That's the queerest portrait I've ever seen." "That's not a portrait," said the clerk, "it's a mirror!"

I know a man who bought what was, undoubtedly, a jerry-built house. Over and over again he protested, without avail, to the builder. The house was his, he was told, and any alterations and repairs must be effected at his expense. When the roof began to leak, the doors to get groggy, and parts of the walls to bulge, he had the following notice printed on his front gate :—

"Exhibition House
Built by Messrs.——
Inspection invited."

The house, so I am told, was virtually re-built shortly afterwards.

After having been in the market for many years, Grafton Manor, near Bromsgrove, has been sold privately. In the reign of Elizabeth the mansion was the chief Roman Catholic mission centre in East Worcestershire.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

(A) Incidence of Estate Duty on Real Estate.
(B) Will—Construction—Words of Futurity.

Q. 3216. (*a*) By the will of one C.S., dated the 8th June, 1925, and proved the 2nd November, 1934, certain real properties were devised to trustees upon trust for certain beneficiaries for life, and after their deaths to the children of such beneficiaries. The gift is made to the trustees in the following words: "I hereby give, devise and bequeath all my real and personal estate, whatsoever and wheresoever situate, subject to the payment of my funeral and testamentary expenses and debts, unto my trustees in trust, etc." Must the estate duty on these properties be borne by the residuary estate, or does each property bear its own estate duty?

(*b*) In the same will the gift of residue is made in the following terms: "I give, devise and bequeath to my trustees the rest and residue of my estate, real and personal, in trust, to divide the same equally between all my children, and I declare that if any child of mine shall die in my lifetime, leaving a child or children who shall survive me, then, and in every such case, such mentioned child or children shall take, and if more than one, equally between them, the share which his, her or their parent would have taken had such parent survived me." The will was signed on the 8th June, 1925, and proved on the 2nd November, 1934. One of the sons of the testator was lost in the sinking of a troopship in 1915. This son left a child. Does the child of the deceased son take a share of the residue?

A. (*a*) Each property will bear its own estate duty: Finance Act, 1894, s. 9 (1). Estate duty on real estate is not a "testamentary expense," seeing that probate can be obtained without paying it: *Re Sharman* [1901] 2 Ch. 280. The executors are not obliged to pay estate duty on freeholds.

(*b*) No: *In re Walker* [1930] 1 Ch. 469.

Will—Universal Bequest and Devise to Widow—Death of Testator in 1923—Post-1925 Death of Widow—Sale—No Evidence of Assent in Favour of Widow—Whether Her or Her Husband's Personal Representatives should Sell.

Q. 3217. A testator died in 1923, leaving all his real and personal estate unto his wife absolutely. His widow died in 1934, leaving a will, and one of her executors is the same person as the surviving executor of the testator's will. I am acting for the purchaser of the real property, and the abstract of title supplied and contract signed by my client makes title through the surviving executor of the original testator's will, and states that no assent in favour of the widow has been made. I have pointed out to the vendor's solicitors that I think one must assume that the testator's estate would be cleared before the 1st January, 1926, and that the widow would become absolutely entitled to the property without any formal assent, and that, therefore, the vendors should be *her* executors. In reply they say that they agree with me up to a point, but that definitely no assent by the original testator's executors has ever been made, and they think that the widow left the property in the executors' names on purpose. I shall be obliged if you will let me know whether you think I can safely take conveyance from the surviving executor of the husband's will or whether the widow's executors should convey as the vendors or join in the conveyance.

A. This is a difficulty which constantly appears. Probably A. of E.A., 1925, s. 36 (6), is no protection in respect of matters pre-1926 (A. of E.A., 1925, s. 36 (12)). There may have been an assent by conduct pre-1926. Further, we would observe that the intentions of the widow (we assume that she was not one of her husband's executors) are not material. It is the intentions and acts of the husband's personal representatives which are material. In view of these considerations we certainly advise our subscriber to press for the concurrence of the wife's personal representatives. We suggest that the husband's personal representative should convey as such, and that the wife's personal representatives should as such convey and confirm, the purchase money being paid to the husband's personal representative with the consent of the wife's personal representatives, or *vice versa*.

Will—Mortgaged Freeholds—Redemption by Personal Representatives—Whether the Power of Assent still exists after Redemption.

Q. 3218. A died in 1932 and part of his residuary estate consisted of freehold property subject to mortgages. By his will he gave his residuary estate to B and C in equal shares. The executors have repaid the mortgages, and it is now desired to appropriate this real estate between B and C. In view of the fact that the estate, which devolved upon the executors, was an estate subject to incumbrances, while it is now proposed to assure an estate free from incumbrances, we shall be very much obliged if you will advise whether an assent can be used for this purpose.

A. "A personal representative may assent" in respect of "any estate or interest in real estate to which the testator . . . was entitled, etc., etc.": A. of E.A., 1925, s. 36 (1). If the proposed assents are executed, the estate which will be passed will be the fee simple. That estate was vested in the testator. The mortgage terms (statutory or otherwise), if any, are *determined* or *merged* in the reversion immediately expectant thereon, that is to say, in the fee simple: L.P.A., 1925, s. 115 (1). The proposed assents will therefore not attempt to vest anything which was not vested in the testator at the date of his death. With these considerations in mind, we express the opinion that assents may properly be employed. If the mortgages were mere legal charges the suitability of assents would be still clearer. It is, of course, assumed that in paying off the mortgages the personal representatives did not take a transfer.

Removal of Director.

Q. 3219. In the absence of any provision in the memorandum and articles of association of a public limited liability company, can the directors of such company remove a co-director from the board of directors by vote at a board meeting, or can the director only be removed from the board by a resolution of the shareholders at a meeting (general or otherwise) at which the shareholders are present? If the directors have power to remove their co-director at a board meeting, has the removed director any claim against the company for damages or compensation in addition to the proportion of his salary to the date of his removal? No question of incapacity or wrongful act against the director arises.

A. The director cannot be removed by vote of the other directors at a board meeting, and he can obtain an injunction

to restrain them from excluding him from office. See *Pulbrook* v. *Richmond Consolidated Mining Co. Ltd.* (1878), 9 Ch. D. 610. If the company in general meeting afterwards resolves that it does not wish the director to continue in office, the injunction will be dissolved, and any further claim by the director must be for damages. See *Bainbridge* v. *Smith* (1889), 41 Ch. D. 462. The company can always take power to remove a director by altering its articles by special resolution, in which event he will have no claim for damages. See *Imperial Hydropathic Co. Ltd.* v. *Hampson* (1882), 23 Ch. D. 1; *Browne* v. *La Trinidad* (1887), 37 Ch. D. 1. In the circumstances stated in the question, the director would be entitled to claim damages for wrongful dismissal, as the existence of the power of removal does not imply that it may be used arbitrarily.

Apprentices' Wages.

Q. 3220. An apprentice executes an Indenture of Apprenticeship whereby he agrees to serve for a given number of years at a fixed weekly wage payable "while at work." On the execution of the indenture a premium was paid by his father to the firm who were agreeing to give him instruction in their line of business. Hitherto, in case of absence through illness, the apprentices of this firm have always received a payment which, together with their sick benefit, amounted to the whole of their weekly wage, but now the firm state that this was merely a gratuitous payment and that in view of the words "while at work" in the Indenture of Apprenticeship, they are under no liability to make any payment in case of absence of an apprentice through sickness, in which case he would have to rely wholly on the sick benefit which he receives.

Apparently, unless there is an express stipulation to the contrary, wages are recoverable during temporary absence from work caused by illness (*Patton & Wood*, 51 J. P. 549), but in view of the words "while at work" there is some doubt as to whether there is an express stipulation to the contrary, or whether this clause would merely be construed so as to prevent an apprentice wilfully absenting himself without leave. Also there is a question as to whether this provision, if unfavourable to the apprentices, will prevent them claiming a holiday on full pay each year as they have hitherto enjoyed.

A. The opinion is given that the words "whilst at work" constitute an express stipulation to the contrary, so as to exclude the present use from the operation of the decision quoted in the question. The expression is so wide that there appears to be no ground for contending that it only applies to wilful absence from work. The result is that apprentices are not entitled to wages during illness or holidays.

Bank Charges.

Q. 3221. What is the legal authority for a bank to make charges for keeping a customer's account especially when in the pass book there is no mention made of any charge for interest for any overdraft (if any). There was no agreement with the bank when the account was opened between the customer and the bank for the customer to pay them. I have looked up "Halsbury's Laws of England" (2nd ed.) vol. 1, p. 869, and it is very vague on this question. I should like to know the legal authority for the quotation in the passage above quoted that it depends on the universal custom of bankers. How did this custom arise and what legal authority is there for its continuance?

A. The custom of making a charge for the operation of a customer's account arose from the necessity of preventing some customers from using the bank as their counting-house, instead of maintaining one of their own. By paying all cash into the bank, and paying by cheque, a customer would be saved the necessity of providing accomodation for clerks and ledgers, and would be saved the expense of cashiers' wages, cost of typewriter, etc. If no charge were made to a customer, who only just keeps his account in credit, the bank would be forced to cast all the burden upon customers working on overdraft, viz., by increasing the interest charges. If a customer keeps a sufficient credit balance, i.e., one which the bank can profitably lend out at interest, it is unusual to make any charge for keeping the account. The legal authority for the practice depends upon the principle of *quantum meruit*, i.e., by accepting an offer of receiver, there is an implied obligation to pay. This principle is still recognised in law, and is the legal authority for the continuance of the custom of making bank charges. A customer who deposits his money in the bank must expect to pay for the privilege, in the same way that he pays a fee for leaving his car in a garage, or his luggage in a cloak-room. At the bank the customer is also supplied (free of charge) with paying-in books, cheque books, and regular copies of his account, in place of the old pass books.

House required by Landlord for his own Occupation.

Q. 3222. We are concerned for a landlord of a Class C house registered as de-controlled under s. 2 of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, but alleged to be controlled. The landlord purchased last December and requires the house for his own occupation. We should be glad of your opinion as to whether para. (*h*) of the First Schedule to the Act of 1933 would be a bar to obtaining possession. The landlord is at present residing nearby.

A. If the house is subject to the Rent Restrictions Acts, the landlord who purchased in December last cannot obtain an order for possession unless the court is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order takes effect (Act of 1933, s. 3 (1)). Paragraph (*h*) of the First Schedule to the Act of 1933 would clearly apply and be a bar to the obtaining of an order for possession without proof of alternative accommodation.

Wife's Costs in Divorce Proceedings.

Q. 3223. With reference to the answer to *Q.* 3150 under the heading of "Points in Practice" in your issue of 13th April, 1935, is there any authority to support the contention that in successful proceedings by a husband against his wife for divorce the husband is liable for solicitor and client costs incurred by his wife? In the particular case which we have in mind the usual security for the wife's costs was ordered by the court and at the end of the case the husband's security was extended to cover the costs incurred by the wife over and above the amount of the security as originally ordered, the court expressing the opinion that the case was a difficult one. In other words, it would appear that it was a case which the wife was justified in defending, and this being so is not the husband liable for the solicitor and client costs which his wife incurred in doing so?

A. The case put is the converse of that discussed in the answer to *Q.* 3150, but the principle is the same, whether the wife is petitioner or respondent. Even in the latter event, her solicitor and client costs are "expenditure necessary for maintaining the wife's rights against her husband." See per Swift, J., in *Michael Abrahams, Sons & Co.* v. *Hoffe-Miles*, previously quoted in the above answer. On the first question now put, there is no direct authority; but, on the above case, and the reasoning suggested by the questioner, the second question is answered in the affirmative.

Recovery of Loan by Infant.

Q. 3224. While A is yet an infant he lends £45 to B (a person of full age). To-day A is twenty-one. Can he recover the amount from B? The loan is evidenced by a promissory note bearing a 6d. stamp.

A. A can recover the amount from B, as infancy is merely a defence, and not a disqualification to a plaintiff. A could have sued through a next friend, before he was twenty-one, but can now sue personally.

To-day and Yesterday

Legal Calendar.

2 September.—On the 2nd September, 1685, "about 4 in the afternoon Mrs. Lisle was beheaded at Winchester. They give not anything of remarks on the scaffold, but that she was old and dozy and died without much concern." The death of this aged lady, widow of a lawyer who had risen to high eminence under the Commonwealth, is one of the chief reproaches to Chief Justice Jeffreys who condemned her, yet, inasmuch as she had harboured fugitive rebels, it is hard to see on what grounds she could have escaped conviction. Indeed, he allowed her time to appeal to the King for mitigation of sentence.

3 September.—On the 3rd September, 1841, Lord Lyndhurst became Chancellor for the third and last time. He was in his seventieth year.

4 September.—Edmund de Stafford, Bishop of Exeter, died on the 4th September, 1419, and was buried in his own Cathedral. He was Lord Chancellor in the menacing latter days of the reign of Richard of Bordeaux, he'd the Great Seal when Henry Bolingbroke landed in England and was shortly afterwards deprived of his office. His conduct, however, disarmed suspicion and in 1401 he was again Chancellor. Even after his retirement, two years later, he continued to enjoy the favour of the new King.

5 September.—John Puleston was one of Cromwell's judges. He came of a very old Flintshire family settled there since the time of Edward I. During the disputes between King and Parliament, he enjoyed the confidence of the Commons and, after the execution of Charles, he took the place of one of the judges who had refused to act and became a Justice of the Common Pleas. His conduct at the trial of Lieut.-Colonel Morrice, the Royalist Governor of Pontefract Castle, did him no credit. He died on the 5th September, 1659.

6 September.—When Elizabeth Wrattan appeared at the Old Bailey on the 6th September, 1833, on a charge of forgery, she behaved like a mad woman. She stared wildly, crumbled the herbs spread before the dock, turned her back on the court, muttered and croaked like a frog. As she refused to plead, the issue of her sanity was tried. During the proceedings of which she took no notice, she struck some persons within her reach, and while Patteson, J., was summing up, she leaped to the top of the bar and would have gone over. After a few minutes deliberation, the jury found that she was shamming, and a plea of "Not Guilty" was entered.

7 September.—On the 7th September, Elizabeth Wrattan's trial came on. This time she did not assume a wild stare or make faces as she had previously done, but she walked to and fro in the dock and played with pieces of paper which she tore into grotesque shapes. When asked about the cheque, the subject-matter of the charge, she said: "It went into the garden—into the Red Sea." To her counsel she said: "You are going to the bottom of the Red Sea," adding in a loud, squeaking tone: "They came out of the land of Egypt." She was found guilty, but seemed unaware of the verdict.

8 September.—John Mansel was one of the most extraordinary characters who ever held the Great Seal, of which he had the custody "to fill the office and duty of Chancellor." He incurred considerable odium as the chief adviser of Henry III, whom he served with unswerving loyalty. Himself, the son of a country priest, he held 700 ecclesiastical livings, and Mathew Paris doubted whether "he was either a wise or a good man who could burden his conscience with the care of so many souls." Not the altar but the council chamber and the battlefield were his proper settings. He resigned his second term as Chancellor on the 8th September, 1248.

The Week's Personality.

When the Whigs were defeated and Sir Robert Peel came into power in 1841, he at once selected as his Chancellor Lord Lyndhurst, on whom he "could confidentially rely when real difficulties were to be encountered." Despite the pressure of advancing years and the threat of failing eyesight, he proved quite equal to the heavy work of his third chancellorship, still retaining his judicial aptitude, his desire to arrive at the truth and his splendid power of statement, as well as his good temper and sense of humour. He discharged his duties faithfully till the Tories went out of office in 1846. This was Lord Brougham's estimate of him: "Lyndhurst was so immeasurably superior to his contemporaries and indeed to almost all who had gone before him, that he might well be pardoned for looking down rather than praising. Nevertheless, he was tolerably fair in the estimate he formed of character and being perfectly free from all jealousy or petty spite, he was always ready to admit merit where it existed. Whatever he may have thought or said of his contemporaries, whether in politics or at the bar, I do not think his manners were ever offensive to anybody, for he was always kind and genial. His good nature was perfect and he had neither nonsense nor cant any more than he had littleness or spite in his composition."

Slang in Court.

Recently in the Vacation Court, a counsel's slip into colloquialism, using "pinch" for "steal," caused Hilbery, J., to say to the offender: "I am almost inclined to give costs against you for using language that is not forensic." Yet there is some precedent for the use of slang in court, even in the language of the great Lord Bramwell when he was at the Bar, for once, it is recorded, a learned judge after a somewhat unexpected statement from him asked: "Are you sure of that, Mr. Bramwell?" "Cock sure! my Lord!" was the vigorous reply. It is not often, however, that the Bar has the opportunity of rebuking the Bench for the use of unjudicial expressions, but it once occurred when the great Scottish advocate Jeffery, afterwards a judge, was pleading before rugged, rough-tongued Lord Newton. He happened, in stating his case, to speak of "an itinerant violinist." Lord Newton interrupted: "D'ye mean a blin' fiddler?" "Vulgarly so called, my Lord," answered the advocate. His Lordship was silent.

Self-Execution.

There is something to be said for the law of which a convicted murderer recently availed himself in Estonia when he elected to drink a dose of cyanide of potassium rather than be hanged. A very curious instance of self-execution created a vast sensation in London in 1699. A young man, an illegitimate son of Sir George Norton, was in Newgate under sentence of death for murder. After he had been told that he was to die next day, his aunt brought two doses of opium to the prison and they each swallowed one. He declared that the law having put a period to his life, he thought it no offence to choose the way he would go out of the world. The prison authorities at once sent for an apothecary, but the condemned man refused to take an emetic until it was threatened to force it down his throat. At last he declared that as he hoped his business was done, he would make everyone easy and consented to take the potion, as did the aunt. The remedy worked on her, but had no effect on him, and he dozed away gradually, dying next morning. He had been determined to kill himself, for a loaded pistol was found hidden in his cell.

Sir William Claude Fawcett, solicitor, of Marton-in-Cleveland, senior partner in the firm of Messrs. Fawcett & Co., of Stockton-on-Tees, left unsettled estate of the gross value of £13,770, with net personalty £1,232.

Reviews.

The British Year Book of International Law, 1935. Sixteenth Year of Issue. Crown 4to. pp. vi and (with Index) 248. London and Oxford: Humphrey Milford, Oxford University Press. 16s. net.

This volume starts with a tribute to the late Professor Alexander Pearce Higgins. His death is a great loss, not only to the "Year Book," but to the work of development of international law.

That development is receiving rough setbacks by the high-handed action of Japan in China, and of Italy in relation to Abyssinia. "Law" which can be flouted by the greater states does not cease to be a rule of conduct, but it loses much of the efficacy which justifies the use of the word "law," and this loss tends to make the layman impatient with the more academic discussions such as that of "The 'Pure' Theory of International Law" by Mr. J. Walter Jones. In the field of international law the layman is of more importance than in other departments of law. Municipal law, with the whole power of the State and its will to enforcement behind it, cannot be ignored. It must be accepted or altered in a regular way. If international "law" be sufficiently disregarded it ceases to be of any effect at all.

This makes the discussion by Professor Quincy Wright, of "The effect of withdrawal from the League upon a mandate," timely and valuable, but, as is pointed out, "certain Japanese writers have insisted that Japan has full title to the mandated islands by virtue of the secret treaties, of her military occupation of these islands, and of their cession to her by the principal allied and associated Powers to whom Germany has ceded them by Article 119 of the Treaty of Versailles." "There is no legal basis for this argument," but if Japan asserts a right to hold her mandated territories in full sovereignty, the League is up against the difficulty it has already once shrunk from meeting. Its members must either acquiesce or apply sanctions.

The fact is that the League Covenant is defective. It became, largely at the instance of France, an instrument for maintaining the *status quo*, and in a world of men changes must come. Until some peaceful method of adjusting the claims of expanding peoples to additions of territory is found, the harsh choice of acquiescence or war will always keep presenting itself. Yesterday Japan presented this choice to us, to-day Italy is about to do the same. To-morrow it will be Germany's claim to "a place in the sun" which will have to be met.

One turns with relief to questions of the "Conflict of Laws." The position here is indeed complex and difficult, but at least questions of high policy, of national urgencies, do not confront us. It is, however, disconcerting to have to admit the truth of Mr. Foster's statement (in "Some Defects in the English Rules of Conflict of Laws") that, "Perhaps the most striking characteristic of English law is its uncertainty; in the Conflict of Laws it is astonishing and deplorable to find that there is no authority on some of the most elementary points."

The volume contains the usual valuable summaries of decisions of International and National Tribunals and a number of excellent reviews.

Judgment Summonses in the Divorce Division. By Edgar A. Phillips, LL.B. 1935. pp. xii and (with Index) 55. London, Liverpool, Birmingham, and Glasgow: The Solicitors' Law Stationery Society, Ltd. 5s. net.

This book was published almost synchronously with the recent statement by the judges in bankruptcy in *In re a Judgment Debtor* [1935] W.N. 128, with regard to the principles on which the court acts in making instalment and committal orders under the Debtors Act, 1869. It thus forms a useful supplement so far as the Divorce Division is concerned to that weighty statement of principle. The author has been mindful of the difficulties arising from the peculiar nature of Orders in the Divorce Division, and has produced a work which indicates considerable acquaintance with the needs of practitioners in that division, both as to "snags" of procedure and as to forms, a number of which are appended. It will completely satisfy a real want.

Powers of Attorney. By F. Bower Alcock, of Gray's Inn, Barrister-at-Law. 1935. Royal 8vo. pp. xxxiv and (with Index) 291. London: Sir Isaac Pitman & Sons, Ltd. 21s. net.

This is a carefully-written and exhaustive work dealing with one of the most complicated branches of the law of agency. It should be very useful not only for members of the legal profession but also for accountants and others called upon to advise upon the giving and drafting of powers of attorney. The volume is divided into ten chapters dealing with the constitution of the instrument, the rights and liabilities of donor and donee and the determination of the power. Two very useful chapters deal separately with proxies and with the colonial laws affecting powers of attorney. An appendix sets out relevant sections of the Law of Property Act, 1925, the Trustee Act, 1925, and the Supreme Court (Consolidation) Act, 1925, and an exhaustive table of cases indicates the completeness with which the learned author has carried out his work.

Arbitration and Awards. By D. F. de l'Hoste Ranking, M.A., LL.D., Ernest Evan Spicer, F.C.A., and Ernest C. Pegler, F.C.A. Sixth Edition. 1935. Edited by C. A. Sales, LL.B., F.S.A.A., and W. W. Bigg, F.C.A., F.S.A.A. Royal 8vo. pp. xxiv and (with Index) 210. London: H.F.L. (Publishers), Ltd. 7s. 6d. net.

To write a successful text-book on Arbitration requires knowledge, practical experience and the gift of lucid exposition. The fact that this work is now in its sixth edition amply proves that the authors have had these requisites at their command. The many statutes and authorities are carefully collected and systematically set out, and neither the student nor the general practitioner will find omitted anything which he needs. In addition to the principal Act of 1889 and its recent amending Act of 1934, the Appendix contains some useful forms. The present editors have ably incorporated the provisions of the 1934 Act into the text. This edition maintains the high standard set by previous editions of the work.

Books Received.

The Juridical Review. Vol. XLVII. No. 3. September, 1935. Edinburgh: W. Green & Son, Ltd. 5s. net.

English Justice. By "Solicitor." Second Edition, 1935. Demy 8vo. pp. xi and 249. London: George Routledge and Sons, Ltd. 5s. net.

Education for the Consumer. Report by the Council for Art and Industry on Art in Elementary and Secondary School Education. 1935. London: H.M. Stationery Office. 1s. net.

Public Speaking. By Archibald Crawford, K.C. 1935. Demy 8vo. pp. viii and (with Index) 250. London: Sir Isaac Pitman & Sons, Ltd. 7s. 6d. net.

India's New Constitution. A Survey of the Government of India Act, 1935. By J. P. Eddy, of the Middle Temple, Barrister-at-Law, ex-Judge of the High Court of Judicature, Madras, and F. H. Lawton, B.A. (Cantab.). 1935. Crown 8vo. pp. xi and (with Index) 239. London: Macmillan and Co., Ltd. 6s. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

Notes of Cases.

High Court—King's Bench Division.

Commissioners of Inland Revenue *v.* Lord Forster.

Finlay, J. 24th July, 1935.

REVENUE—SUR-TAX—ANNUITY—AGREEMENT BY COMPANY LIABLE FOR ANNUITY TO PAY ANNUITANT'S INSURANCE PREMIUMS OUT OF MONEYS DUE TO HIM—WHETHER AMOUNT OF PREMIUMS ASSESSABLE AS PART OF TOTAL INCOME.

Appeal by the Crown from a decision of the Commissioners for the Special Purposes of the Income Tax Acts reducing additional assessments to sur-tax made upon the respondent for the years ended the 5th April, 1932 and 1933.

By an agreement dated the 5th April, 1928, Lord Forster sold his life interest in certain settled lands to a company for £90,350, to be satisfied by the allotment to him of certain fully-paid shares and a payment of £35,100 in cash. The company was further at liberty to satisfy the debt of £35,100 by paying Lord Forster, as from the 6th April, 1928, an annuity of £5,200 for the rest of his life, with deductions only for income tax. By a deed dated the 24th May, 1928, the company covenanted to pay the respondent his annuity at the rate of £433 6s. 8d. a month. By a deed dated the 25th March, 1931, the company agreed to pay for eleven years as from the 5th April, 1931, if the respondent should live so long, the premiums, amounting to £1,873 7s. 4d. per annum, on certain of his life insurance policies. In return, the respondent undertook not, after the 5th April, 1931, to demand £201 8s. 4d. per month (i.e., £2,417 per annum) part of the £433 6s. 8d. per month (i.e., £5,200 a year) which the company had agreed to pay him, £2,417 per annum being a sum which, after deduction of income tax at the then standard rate of 4s. 6d. in the pound, would amount to the £1,873 7s. 4d. necessary for the premiums. In his returns of total income for sur-tax purposes for the years in question, the respondent did not include the £2,417 per annum. It was contended for the Crown *inter alia* that in paying the premiums the company were only applying a part of the respondent's income in payment of a personal liability of his and that the sum, having been so applied, was part of his total income chargeable to sur-tax. For the respondent it was contended that he was not assessable to sur-tax in respect of the £1,873 7s. 4d., and the Commissioners, having accepted this view, discharged the assessments.

FINLAY, J., said that the true view was that a private company had agreed to pay premiums which Lord Forster would otherwise have had to pay himself if he wished to prevent his policies from lapsing. That payment by the company for Lord Forster was in his (his lordship's) opinion income of Lord Forster's. *Meeking* v. *Commissioners of Inland Revenue*, 7 T.C. 603; *Shanks' Case*, 14 T.C. 249; and *Sutton's Case*, 14 T.C. 662, were similar cases. It had been argued for the respondent that his undertaking not to demand of the company, after the 5th April, 1931, a part of the annuity originally agreed on had been an absolute release of part of his income. In his (his lordship's) opinion, that was no release; but it did not matter whether it was one or not, because this agreement by the company, from whatever motives, to pay Lord Forster's premiums for him, was, both on principle and on authority, an addition to his income; he received what might be called "money's worth"—a promise by a solvent company to pay his premiums. The appeal must therefore be allowed.

COUNSEL: *The Solicitor-General* (Sir Donald Somervell, K.C., M.P.) and *R. P. Hills*, for the appellants; *Cyril King*, for the respondent.

SOLICITORS: *Solicitor of Inland Revenue; Frere, Cholmeley and Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Slater *v.* Spreag.

MacKinnon, J. 30th and 31st July, 1935.

NEGLIGENCE—DAMAGES—FATAL ACCIDENT—CAUSE OF ACTION VESTED IN THE DECEASED AT HIS DEATH—PAIN AND SUFFERING—SHORTENED EXPECTATION OF LIFE—FATAL ACCIDENTS ACT, 1846—LAW REFORM (MISCELLANEOUS PROVISIONS) ACT, 1934 (24 & 25 Geo. 5, c. 41) s. 1 (1), (2), (5).

On the 22nd of December, 1934, one, Frank Slater, the husband of the plaintiff, was killed in a collision between the cycle on which he was riding and a motor car driven by the defendant. The plaintiff accordingly claimed damages on behalf of herself and her children under the Fatal Accidents Act, 1846, and, as administratrix of the deceased's estate, she claimed under the Law Reform (Miscellaneous Provisions) Act, 1934, for loss to the estate resulting from the accident, On the case being called on, the defendant admitted negligence. and the only remaining question was the amount of damages.

MACKINNON, J., said that the plaintiff's two claims under the two Acts in question were essentially different. The one was on behalf of the deceased's dependants, and the other was made by the plaintiff as administratrix; if the deceased had made a will, any money recovered under the latter claim would have had to be dealt with in accordance with it. It had to be remembered that, by s. 1 (5) of the 1934 Act, any rights conferred by that Act were in addition to rights conferred by the 1846 Act. The right amount to be awarded as damages to the dependants on the claim under the 1846 Act was in his (his lordship's) opinion £1,850, to which, as permitted by the 1934 Act, would be added the funeral expenses, namely, £18. With regard to the claim under the 1934 Act, the plaintiff had contended that, immediately before the death, there was vested in the deceased a cause of action under two headings: (1) pain and suffering, (2) a shortened expectation of life. A possible third ground of claim would have been loss of future earnings but, in his (his lordship's) opinion, that would have been excluded by s. 1 (2) (*c*) of the 1934 Act, which provided that, where the death had been caused by the act giving rise to the cause of action, the damages recoverable to the estate should be calculated without reference to any loss or gain to the estate consequent on the death, excepting funeral expenses. The claims for pain and suffering and shortened expectation of life were based on *Flint* v. *Lovell* [1935] 1 K.B. 354, a case which had introduced novel considerations into the law as to damages. Could claims of this nature ever be a cause of action which survived for the benefit of the estate? He (his lordship) thought they could. If a man lingered in hospital for six months, incurring medical expenses, losing wages and suffering pain, and then died, there was at his death vested in him in respect of each of those matters a cause of action which, under the new Act, survived for the benefit of his estate. In this case, however, it had not been proved that the deceased had in fact suffered any pain; he had been unconscious from the moment of the accident until death. On that point the plaintiff therefore failed. As to the claim for the shortened expectation of life, he (his lordship) was not sure that he appreciated the full purport of the judgment in *Flint* v. *Lovell*, *supra*, but to his mind the damages there had been for the subjective effect on the injured man of knowing that his expectation of life was shortened—of knowing that, instead of being a healthy man, he was a crippled wreck. But this mental distress the injured man here had never suffered; there was therefore at his death no cause of action in respect of it vested in him which would survive for the benefit of his estate. Accordingly the plaintiff would have judgment for £1,868.

COUNSEL: *Edward Terrell* (*T. J. O'Connor*, K.C., with him) for the plaintiff; *Russell Vick*, K.C., and *Montague Berryman*, for the defendant.

SOLICITORS: *Herbert Z. Deane & Co.; Berrymans.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Matheson *v.* **Matheson and Hartley.**

Bucknill, J. 31st July, 1935.

Divorce—Petition for Settlement of Wife's Property—Interests of Children of the Marriage—Factors to be Considered by the Court—Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. 5, c. 49), s. 191, sub-s. (1).

On this motion by a husband petitioner to vary the registrar's report on a petition for a settlement of the wife's property the court upheld the report of the registrar refusing an order. The material facts and arguments appear sufficiently from the judgment.

Bucknill, J., in the course of delivering a considered judgment, said: This is a motion to vary the report of the registrar on a petition by the husband-petitioner for settlement of the wife-respondent's free property. There is also a motion to vary the report of the registrar on a petition by the husband-petitioner to vary a post-nuptial settlement on the wife-respondent, but the report of the registrar on this petition is accepted by both parties, with one agreed variation as to the appointment of fresh trustees. The variations of the post-nuptial settlement have some bearing on the present motion. The result of these variations is that the children are fairly certain to receive the reversionary interest in the trust funds of the post-nuptial settlement. On the motion on the petition to settle the free property of the respondent the registrar reported that no order should be made. Counsel on behalf of the petitioner asked that this report be varied and that a major portion of the free property should be vested in trustees on trust, that the respondent should retain the whole of the income therefrom during her life, and that after her death the property should pass to the children of her marriage with the petitioner. There are five children of the marriage, aged twenty-eight, twenty-seven, twenty-five, twenty-three and nineteen years respectively. The respondent is now married to the co-respondent. Her age is fifty-two, so that there is no reasonable prospect of issue of her present marriage. At the present time the respondent possesses stocks and shares of the value of about £13,453, which produces a gross income of £531 a year. In addition, she has a freehold property worth about £2,000. Consideration of the various cases cited shows that the main question for the court is the nature and extent of the pecuniary prejudice caused to the husband and the children of a marriage by the dissolution of the marriage and the breaking away of the wife with her property from the common home. The registrar reports to the court: "The husband is an underwriter at Lloyds. His total annual income as stated by him amounts to about £7,431 gross, taking an average for the last three years. He has securities to the value of £22,150 deposited at Lloyds. His brokerage firm has a capital of £5,000. He is possessed of other investments of the capital value of about £10,000, and of a freehold house, the value of which he puts at £6,000. His age is fifty-seven." I was informed at the hearing that his life was also insured for £11,000, as stated in his reply. About two years ago the respondent gave £2,000 to the elder daughter to purchase a share in a school, which makes a total of £4,000 in all transferred by the respondent to the eldest child of the marriage. The respondent's annual income is £881 gross, of which £350 is the proceeds of the funds of the post-nuptial settlement. It is about one-tenth of the petitioner's total gross income. I do not consider that the dissolution of the marriage has seriously prejudiced the pecuniary status of the husband and the children. [His lordship here referred to the judgment of Mr. Justice Bucknill in *Lorriman* v. *Lorriman and Clair* [1908] P. 282, at p. 289, and to a dictum of Sir Gorrell Barnes, as he then was, in *Hartopp* v. *Hartopp* [1899] P. 65, at p. 72.] I do not find that before the home was broken up by the respondent's adultery the children received, or were likely to receive, any substantial pecuniary benefit from their mother. It is true that the elder daughter received £4,000 from her, but the court is not asked to make any order which would have the effect of giving any present pecuniary benefit to a child of the marriage apart from the value of a reversionary interest in the capital. As regards the future, there is not sufficient reason for thinking that the respondent will lose her affection for her children. On the other hand, I think it probable that she will leave the bulk of her free property to her children if she retains a free hand in the matter. As time goes by the respondent will probably be in a position to know which of her children is in most need of financial assistance. In the future she may wish to give some of her capital to one of her children. Her power to do this would be taken away in so far as a settlement were now to be ordered by the court. Taking into account the present financial status of the husband, the ages and position of the children, and the amount of the property of the wife, it does not seem to me, after anxious reflection on the matter, that this is a case in which the court should order a settlement of the wife's property.

Counsel: *Eversheđ*, K.C., and *H. B. D. Grazebrook*, for the petitioner; *Bayford*, K.C., and *F. L. C. Hodson*, for the respondent.

Solicitors: *Parker, Garrett & Co.; Walter Crimp & Co.*, for *Harold Michelmore & Co.*, Newton Abbott.

[Reported by J. F. Compton-Miller, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume.—Part II.

Mr. Arthur Hannibal Thomas, solicitor, of Camborne, left estate of the gross value of £124,298, with net personalty £114,598. He left: £500 to Redruth Miners' and Women's Hospital; £250 to Dr. Barnardo's Homes; £250 to the West London Mission; £250 to the Salvation Army; £500 to the Wesley Chapel, Camborne; £250 to the Camborne Nursing Association; £250 to the Camborne Ambulance Association; £200 to Hoxton Mission, Boot-street, Hoxton; £500 to the rector of the Parish Church of St. Martin, Camborne, and the superintendent of the Camborne Wesleyan Circuit, the income thereof to be applied at Christmas for the poor of the parish.

Obituary.

Mr. M. MORGAN.

Mr. Morgan Morgan, Barrister-at-Law, of Pump-court, Temple, died recently in London at the age of seventy. He was called to the Bar by the Middle Temple in 1901, and practised for many years on the South Wales Circuit and in London. He founded the Institute of Patentees in 1919, and was president in 1923-24. Mr. Morgan unsuccessfully contested as a Conservative Ebbw Vale in 1922 and the Upton Division of West Ham in 1929.

Mr. C. J. M. CHILD.

Mr. Charles John Mead Child, solicitor, senior partner in the firm of Messrs. Child & Child, of Sloane-street, S.W., died at Bedford Park on Tuesday, 3rd September, at the age of sixty-two. Mr. Child was admitted a solicitor in 1895.

Mr. J. WOODMAN-SMITH.

Mr. John Woodman-Smith, B.A. Oxon, a partner in the firm of Messrs. Baylis, Pearce & Co., of Fore-street, E.C., died on Sunday, 1st September, at the age of forty-four. Mr. Woodman-Smith, who was educated at Trinity College, Glenalmond, and Corpus Christi College, Oxford, was admitted a solicitor in 1927, having gained the Clifford's Inn prize. He was Ward Clerk of Cripplegate for six years and Clerk of the Carmen's Company.

Long Vacation, 1935.

HIGH COURT OF JUSTICE.

Notice.

During the Vacation, up to and including Saturday, 5th October, 1935, all applications "which may require to be immediately or promptly heard," are to be made to the Hon. Mr. Justice Greaves-Lord.

Court Business.—The Hon. Mr. Justice Greaves-Lord will, until further notice, sit in The Lord Chief Justice of England's Court, Royal Courts of Justice, at half-past 10 on Wednesdays, commencing on Wednesday, 4th September, for the purpose of hearing such applications of the above nature, as, according to the practice in the Chancery Division, are usually heard in Court.

Papers for Use in Court.—Chancery Division.—The following Papers for the Vacation Judge are required to be left with the Cause Clerk in attendance at the Chancery Registrar's Office, Room 136, Royal Courts of Justice, on or before 1 o'clock, two days previous to the day on which the application to the Judge is intended to be made:—

1.—Counsel's certificate of urgency or note of special leave granted by the Judge.

2.—Two copies of notice of motion, one bearing a 5s. impressed stamp.

3.—Two copies of writ and two copies of pleadings (if any).

4.—Office Copy Affidavits in support and also Affidavits in answer (if any).

No Case will be placed in the Judge's Paper unless leave has been previously obtained or a Certificate of Counsel that the Case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

N.B.—Solicitors are requested when the application has been disposed of, to apply at once to the Judge's Clerk in Court for the return of their papers.

Urgent Matters when the Judge is not Present in Court or Chambers.—Application may be made *in any case of urgency*, to the Judge personally (if necessary), or by post or rail, prepaid, accompanied by the brief of Counsel, office copies of the affidavits in support of the application, and also by a Minute, on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows:—"Chancery Official Letter: To the Registrar in Vacation, Chancery Registrar's Office, Royal Courts of Justice, London, W.C.2."

The address of the Vacation Judge can be obtained on application at Room 136, Royal Courts of Justice.

Chancery Chamber Business.—The Chancery Chambers will be open for Vacation business on Tuesday, Wednesday, Thursday and Friday in each week, from 10 to 2 o'clock.

King's Bench Chamber Business.—The Hon. Mr. Justice Greaves-Lord will sit for the disposal of King's Bench Business in Judges' Chambers at half-past 10 on Tuesday in each week.

Probate and Divorce.—Summonses will be heard by the Registrar, at the Principal Probate Registry, Somerset House, every day during the Vacation at 11.15 (Saturdays excepted).

Motions will be heard by the Registrar on Wednesdays, the 14th and 28th August, and the 11th and 25th September, at the Principal Probate Registry at 12.15.

Decrees will be made absolute on each Wednesday during the Vacation, except Wednesday, the 2nd October.

All Papers for making Decrees absolute are to be left at the Contentious Department, Somerset House, on the preceding Thursday, or before 2 o'clock on the preceding Friday. Papers for Motions may be lodged at any time before 2 o'clock on the preceding Friday.

The Offices of the Probate and Divorce Registries will be opened at 10 a.m. and closed at 1 p.m. except on Saturdays, when the Offices will be opened at 10 a.m. and closed at 1 p.m.

Royal Courts of Justice.
Room 136.

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. John Clement Parker to be the Registrar of Chesham County Court as from the 26th August, 1935. Mr. Parker was admitted a solicitor in 1897.

Professional Announcements.

(2s. per line.)

Messrs. Woodroffes, solicitors, of 18, Great Dover-street, S.E.1, announce that as from the 1st August, 1935, the name of the firm has been changed to "Woodroffes & Gibbs." The partners continue as before.

Solicitors & General Mortgage & Estate Agents Association.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Notes.

Lord Kennet has joined the Board of the Equity and Law Life Assurance Society.

Sir Boyd Merriman addressed the Canadian Club in Ottawa last Wednesday on the history of the Admiralty Court.

Lord Alness has been appointed to a seat on the head office board of the General Accident Fire and Life Assurance Corporation.

The King has appointed Lord Ancaster and Lord Sandon to be members of the Royal Commission on Historical Manuscripts.

Mr. R. A. Griffith has resigned his appointment as Stipendiary Magistrate for Merthyr Tydfil, which he has held since 1915. Mr. Griffith was called to the Bar by the Middle Temple in 1903.

Mr. F. D. V. Cant, Assistant Town Clerk of Hereford, has been presented, on behalf of members of the council, with a case of cutlery on the occasion of his marriage. Mr. Cant was admitted a solicitor in 1931.

Lord Crawford will preside at the eighth national conference of the Council for the Preservation of Rural England at Newcastle-upon-Tyne early next month. The Association for the Preservation of Rural Scotland and members of the Northumberland and Newcastle Society are co-operating in the conference.

Mr. George Colville, who was appointed secretary of the Institute of Chartered Accountants in England and Wales in 1899, has resigned, and has been succeeded by Mr. R. Wynne Bankes, who has acted as assistant secretary since 1929. The assistant secretaryship has been filled by the appointment of Mr. Alan S. MacIver.

"I should not have thought exceeding the speed limit was a fault in the Fire Brigade," said Sir Gervais Rentoul, the magistrate, at West London recently. A man summoned for exceeding the speed limit asked for his licence not to be endorsed as he was in the London Fire Brigade and had a chance of a good post. It was treated as a first offence.

Mr. Homer Cummings, Attorney-General of the United States, arrived in London last Tuesday. He has arranged to remain for ten days in order to study the methods of Scotland Yard in dealing with criminals and with the problem of crime generally. He is credited with a keen desire to get fresh ideas for use in his campaign against the law-breakers of America.

The London County Council announces a course of law classes which will be held at Kennington Commercial Institute during the Session beginning 16th September, 1935, on the evenings of Mondays, Wednesdays, Thursdays and Fridays, between 7.40 and 9.40. All communications should be sent to the Principal, Kennington Commercial Institute, Kennington Park, S.E.11, from whom prospectus and full particulars may be obtained.

Wills and Bequests.

Mr. William Tucker Bloxam, retired solicitor, of Southsea, Hants, left £86,326, with net personalty £76,344.

Mr. Edward Ernest Burgess, solicitor, of Scarborough and of Doncaster, left £32,555, with net personalty £4,336.

Mr. Frederick Hall, J.P., solicitor, of Folkestone, left £61,298, with net personalty £56,982.

Mr. Spencer Bernard Kendall, solicitor, of Chislehurst and of Lincoln's Inn, left £11,917, with net personalty £9,808.

Mr. Philip Augustus Sowerby Ruston, solicitor, of Chatteris, Cambs, left £43,695, with net personalty £36,262.

Mr. Henry S. Barker, of Sheffield, solicitor, left £51,610, with net personalty £34,575.

Mr. William Ashford, of Stratford-on-Avon, for many years a solicitor in Birmingham, left £8,694, with net personalty £7,525.

Mr. Eugene Carder, solicitor, of River, near Dover, left £13,472, with net personalty £8,894.

Mr. Francis John Hunt, solicitor, of Romford, left £49,960, with net personalty £45,963.

Mr. William Bernard Way, solicitor, of Yarmouth, Isle of Wight, left £13,246, with net personalty £11,314.

Mr. Frank Holcroft Fisher, solicitor, of Bristol, left £16,371, with net personalty £8,295.

Mr. Herbert James Whittell Holt, retired solicitor, of Sydenham, left £17,152, with net personalty £10,487.

Mr. Percy Loring, solicitor, of Elstree Hill, Bromley, Kent, left £21,165, with net personalty £7,583.

Mr. Percy Colquhoun Atkins, solicitor, of Austin Friars, E.C., left £11,059, with net personalty £10,635.

Mr. William Jebb Wigston, solicitor, of Ashtead, Surrey, left £68,015, with net personalty £65,699.

Mr. Alexander Young Adam, solicitor, of Dundee, left personal estate value £27,611.

Mr. Henry George Hawkes, solicitor, of Leamington Spa, left £19,514, with net personalty £7,875.

Mr. Alexander Storm, of Nairn, senior partner in Messrs. Laing and Storm, solicitors, of Nairn, left £12,947 personal estate.

Colonel Frank Landon, V.D., D.L., solicitor, of Brentwood, left £12,564, with net personalty £12,210.

Mr. Herbert George Carr Carr-Ellison, solicitor, of Newcastle, left £16,248, with net personalty £14,101.

Mr. Frederick Gregson, solicitor, of Southend-on-Sea, left £16,692, with net personalty £14,798.

Mr. Thomas Tannett, solicitor, of Harrogate and Leeds, left £83,905, with net personalty £82,765.

Mr. William Self Weeks, solicitor, of Clitheroe, left £24,397, with net personalty £23,617.

Mr. Frank Howard Woolley, solicitor, of Brighton, and formerly of Lincoln's Inn Fields, left £16,095, with net personalty £15,631.

Mr. Alfred Webster Bullock, solicitor, of Macclesfield, left £21,083, with net personalty £14,181.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 12th September, 1935.

	Div. Months.	Middle Price 4 Sept. 1935.	Flat Interest Yield.	‡Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	113⅛	3 10 6	3 2 4
Consols 2½%	JAJO	83⅛xd	2 19 11	—
War Loan 3½% 1952 or after	JD	105⅛	3 6 6	3 1 11
Funding 4% Loan 1960-90	MN	116½	3 8 8	3 0 11
Funding 3% Loan 1959-69	AO	102⅛	2 18 6	2 17 1
Victory 4% Loan Av. life 23 years	MS	113⅛xd	3 10 6	3 3 4
Conversion 5% Loan 1944-64	MN	120¼	4 3 2	2 3 11
Conversion 4½% Loan 1940-44	JJ	111	4 1 1	2 6 8
Conversion 3½% Loan 1961 or after	AO	104⅛xd	3 7 0	3 4 10
Conversion 3% Loan 1948-53	MS	103⅛	2 18 0	2 13 2
Conversion 2½% Loan 1944-49	AO	100⅛xd	2 9 9	2 8 8
Local Loans 3% Stock 1912 or after	JAJO	94xd	3 3 10	—
Bank Stock	AO	365½	3 5 8	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	85	3 4 8	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	95	3 3 2	—
India 4½% 1950-55	MN	113	3 19 8	3 7 8
India 3½% 1931 or after	JAJO	93xd	3 15 3	—
India 3% 1948 or after	JAJO	82xd	3 13 2	—
Sudan 4½% 1939-73 Av. life 27 years	FA	119	3 15 8	3 8 3
Sudan 4% 1974 Red. in part after 1950	MN	115	3 9 7	2 15 4
Tanganyika 4% Guaranteed 1951-71	FA	114	3 10 2	2 16 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	111	4 1 1	2 12 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	109	3 13 5	3 7 6
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	103	3 12 10	3 9 3
Canada 4% 1953-58	MS	110	3 12 9	3 5 2
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
*New Zealand 3% 1945	AO	100xd	3 0 0	3 0 0
†Nigeria 4% 1963	AO	115	3 9 7	3 3 7
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 2
South Africa 3½% 1953-73	JD	108	3 4 10	2 18 4
*Victoria 3½% 1929-49	AO	99xd	3 10 8	3 11 10
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	96	3 2 6	—
*Croydon 3% 1940-60	AO	100xd	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	107	3 5 5	2 19 5
Leeds 3% 1927 or after	JJ	95	3 3 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	107xd	3 5 5	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	81	3 1 9	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	95	3 3 2	—
Manchester 3% 1941 or after	FA	97	3 1 10	—
*Metropolitan Consd. 2½% 1920-49	MJSD	99½	2 10 3	2 10 10
Metropolitan Water Board 3% "A" 1963-2003	AO	99xd	3 0 7	3 0 8
Do. do. 3% "B" 1934-2003	MS	97	3 1 10	3 2 1
Do. do. 3% "E" 1953-73	JJ	101	2 19 5	2 18 7
†Middlesex County Council 4% 1952-72	MN	115	3 9 7	2 17 6
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 2 11
Nottingham 3% Irredeemable	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	106½	3 5 9	3 3 7
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	113	3 10 10	—
Gt. Western Rly. 4½% Debenture	JJ	125½	3 11 9	—
Gt. Western Rly. 5% Debenture	JJ	135½	3 13 10	—
Gt. Western Rly. 5% Rent Charge	FA	132½	3 15 6	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	126½	3 19 1	—
Gt. Western Rly. 5% Preference	MA	114½	4 7 4	—
Southern Rly. 4% Debenture	JJ	112	3 11 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	112⅛	3 11 1	3 5 11
Southern Rly. 5% Guaranteed	MA	128½	3 17 10	—
Southern Rly. 5% Preference	MA	115½	4 6 7	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

1935

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Stock
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3 10 0	
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3 3 7	
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